

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

September 3, 2003

Call to order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:37 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Phil Blair, Sheridan Downey, Pamela Karlan, and Thomas Knox were present.

1. Public Comment.

Caren Daniels-Meade, Chief of the Political Reform Division of the Secretary of State's office, reported that the SOS website has new features, including a new look to Cal-Access, an "Advanced Reports" searchable database, and linking of late independent expenditures to candidates. They hoped to have the same link for ballot measures by the end of the week. She noted that they now have a "one-stop shopping" page for the recall and special statewide election information, and she described the information available.

Ms. Daniels-Meade stated that her office is trying to track all of the contributions and expenditures for the replacement candidates in the recall election, noting that a number of them file on paper only because they are not raising enough money to require that they file electronically. They hoped to release the information later in the week. She noted that, 66 of the 135 candidates have filed something, reporting a total of over \$9.2 million has been reported as raised through August 23, 2003, over \$6.1 million has been spent, and \$4.9 million is available cash-on-hand.

Ms. Daniels-Meade stated that the SOS expanded the CARES view of the filings, available to the FPPC and Franchise Tax Board only, to include addresses and phone numbers.

Lisa Hayes, sister of Ned Roscoe, a candidate for governor, voiced her concern that her father could contribute only \$21,200 to his son's campaign while Lieutenant Governor Cruz Bustamante could collect \$2 million from special interests and the FPPC does nothing to stop it. She believed that it was wrong to allow a double standard, and asked that the Commission explain how Lt. Governor Bustamante found a loophole allowing the special interest money into his campaign. She suggested that, if the FPPC could not stop the practice, they should make the information readily available to the press and the public. She asked that the Commission enforce the political finance laws fairly, publicly and quickly.

Tom Hiltachk, on behalf of Rescue California, described the organization's involvement in supporting the recall campaign. He charged that one candidate believed that different rules applied to his campaign. Mr. Hiltachk observed that past campaign finance

litigation has shown that the statutes must be applied fairly and equally to incumbents and non-incumbents or the statute is unconstitutional. He questioned what contribution limits mean when Lt. Governor Cruz Bustamante, as an incumbent, is permitted to receive \$2 million contributions from a single donor into his Lt. Governor committee with the acknowledged intent of using the monies for the Governor's race. He reiterated Senator Johnson's request that the FPPC enforce the Act, noting that the transfer rule cannot swallow the basic contribution limits, and should not be used to circumvent the contribution limits of Proposition 34. He read from the statute, and noted it clearly provides that there are contribution limits in the race and the transfer rules cannot be made to launder \$2 million through the Lt. Governor's race into the race for Governor. He objected to the system that would suggest that donations made to the Lt. Governor's 1998 campaign were made for the current Governor's campaign.

Commissioner Knox asked whether Mr. Hiltachk believed that the FPPC has said or done anything to encourage a circumvention of the law.

Mr. Hiltachk responded that if the FPPC does nothing it will encourage circumvention. He agreed that the statute was clear, but suggested that the Commission should do something about it. He observed that the situation had been going on for a week, with the Sycuan Indian tribe making a \$300,000 contribution to Lt. Governor's race was for the Governor's race. Every subsequent contribution received by the Lt. Governor's race has been acknowledged by the donors to be for the Governor's race.

Commissioner Knox asked Mr. Hiltachk whether anyone at the Commission had issued any statement or adopted any ruling or regulation that would foster a circumvention of the law.

Mr. Hiltachk responded that the Executive Director made early comments that this involved a legal loophole. He noted that a press release issued by the FPPC the previous week stated that it was clear that contributions cannot be solicited for that purpose. However, he pointed out that reporters have told him that as long as the donor is not specifically asked to make the contribution and then told that the money would be transferred, then it may be a legal contribution. He charged that the Commission had been unclear in the media about its position, and that the way to make it clear was to enforce the law.

Chairman Randolph stated that the open meeting laws preclude the Commission from taking up any issue that is not on the agenda. She thanked the speakers for their comments and noted that they would be referred to staff.

CONSENT ITEMS

Chairman Randolph requested that item #4 be removed from the consent calendar.

Commissioner Karlan asked whether an agent can sign for a respondent, as was done in item 9b.

Enforcement Chief Steven Russo responded that it was appropriate in that case.

Commissioner Karlan moved that the following consent calendar be approved:

2. **Approval of the Minutes of the August 11, 2003, Commission Meeting.**
4. **In the Matter of AFL-CIO No On 226 Education Fund; and Frances Arlene Holt-Baker; FPPC No. 00/377.** (3 counts.)
5. **In the Matter of Paul F. Glenn; FPPC No. 02/705.** (1 count.)
6. **In the Matter of Frederick Kosmo, FPPC No. 02/234.** (1 count.)
7. **In the Matter of Thomas Janzen, FPPC No. 02/457.** (1 count.)
8. **In the Matter of Robert Watrous, FPPC No. 02/549.** (2 counts.)
9. **Failure to Timely File Major Donor Campaign Statements.**
 - a. **In the Matter of Frederick DeMann, FPPC No. 2003-313.** (1 count.)
 - b. **In the Matter of Tom & Holly Gores, FPPC No. 2003-319.** (1 count.)
 - c. **In the Matter of Moffatt & Nichol Engineers, FPPC No. 2003-322.** (1 count.)
 - d. **In the Matter of Thomas F. Kelly, FPPC No. 2003-331.** (1 count.)
 - e. **In the Matter of William L. Davis, FPPC No. 2003-332.** (1 count.)
 - f. **In the Matter of Clark E. Parker, FPPC No. 2003-339.** (1 count.)
 - g. **In the Matter of American Bioscience, Inc. & Its Affiliate American Pharmaceutical Partners, Inc., FPPC No. 2003-372.** (1 count.)
 - h. **In the Matter of Scott Brittingham, FPPC No. 2003-378.** (1 count.)
 - i. **In the Matter of Dave Brooks, FPPC No. 2003-379.** (1 count.)
 - j. **In the Matter of California Housing Consortium, FPPC No. 2003-384.** (1 count.)
 - k. **In the Matter of Central Health MSO., Inc., FPPC No. 2003-387.** (1 count.)
 - l. **In the Matter of Cresleigh Homes Corp., FPPC No. 2003-390.** (1 count.)
 - m. **In the Matter of Electric City of Southern California, FPPC No. 2003-393.** (1 count.)
 - n. **In the Matter of Enterprise Rent-A-Car, FPPC No. 2003-394.** (1 count.)
 - o. **In the Matter of Steven J. Goldman, FPPC No. 2003-397.** (1 count.)
 - p. **In the Matter of Jeff Haines, FPPC No. 2003-399.** (1 count.)
 - q. **In the Matter of Marcia Israel-Curley, FPPC No. 2003-402.** (2 counts.)
 - r. **In the Matter of Peter R. Kellogg, FPPC No. 2003-404.** (1 count.)
 - s. **In the Matter of Peter D. Kiernan, FPPC No. 2003-405.** (1 count.)
 - t. **In the Matter of L.F.P., Inc., FPPC No. 2003-407.** (1 count.)
 - u. **In the Matter of Charles Theodore Mathews, FPPC No. 2003-410.** (1 count.)

- v. In the Matter of Michael D. McCarthy, FPPC No. 2003-411. (1 count.)
- w. In the Matter of Michael & Gail Roback, Michael D. Roback M.D., A Medical Corp., FPPC No. 2003-414. (2 counts.)
- x. In the Matter of William Preston Raisin, FPPC No. 2003-421. (1 count.)
- y. In the Matter of Mark A. Roe, FPPC No. 2003-424. (1 count.)
- z. In the Matter of Anne M. Roller, FPPC No. 2003-425. (1 count.)
- aa. In the Matter of Trimark Pacific Homes, FPPC No. 2003-430. (1 count.)
- bb. In the Matter of Stephen A. Wynn, FPPC No. 2003-436. (1 count.)
- cc. In the Matter of Denis McMahon, FPPC No. 2003-454. (1 count.)
- dd. In the Matter of Ravano & Cooney, FPPC No. 2003-456. (1 count.)
- ee. In the Matter of 11 Haight Street, FPPC No. 2003-458. (1 count.)
- ff. In the Matter of Coyne Development Company, FPPC No. 2003-461. (1 count.)
- gg. In the Matter of Las Casitas Seventeenth Street, LLC, FPPC No. 2003-463. (1 count.)
- hh. In the Matter of Lofts at 712 Bryant Street, LLC & Affiliated Entity South Park Lofts, LLC, FPPC No. 2003-464. (1 count.)
- ii. In the Matter of Village Builders 98 & Affiliated Entities, FPPC No. 2003-468. (1 count.)
- jj. In the Matter of Tom Murphy & Affiliated Entities, FPPC No. 2003-469. (1 count.)
- kk. In the Matter of 1050 17th Street, LLC & Affiliated Entities, FPPC No. 2003-470. (1 count.)
- ll. In the Matter of Allen, Curtis, Eisenberger & Affiliated Entities, FPPC No. 2003-471. (1 count.)
- mm. In the Matter of W. Charles Chastain, FPPC No. 2003-489. (1 count.)
- nn. In the Matter of Enxco Service Corp, FPPC No. 2003-491. (1 count.)
- oo. In the Matter of Parking Company of America Management, LLC, FPPC No. 2003-494. (2 counts.)

10. Failure to Timely File Major Donor Campaign Statements.

- a. In the Matter of Helen Lho, FPPC No. 2003-408. (1 count.)
- b. In the Matter of Network Management Group, FPPC No. 2003-416. (1 count.)
- c. In the Matter of Felim O'Reilly & Affiliated Entities, FPPC No. 2003-455. (1 count.)
- d. In the Matter of UMB Corporation, FPPC No. 2003-457. (1 count.)
- e. In the Matter of AF Evans Company, Inc., FPPC No. 2003-460. (1 count.)
- f. In the Matter of Joe Imbelloni & Affiliated Entities, FPPC No. 2003-462. (1 count.)
- g. In the Matter of Matthew Murphy, FPPC No. 2003-465. (1 count.)
- h. In the Matter of James G. Nunemacher, FPPC No. 2003-466. (1 count.)

Commissioner Blair seconded the motion. Commissioners Blair, Downey, Karlan, Knox and Chairman Randolph voted “aye.” The motion carried unanimously.

11. Pre-Notice Discussion of Regulation 18728.5 and Amendment of Regulation 18703.3 – Definition and Reporting of Incentive Compensation.

Commission Counsel Holly Armstrong explained that the Commission dealt with treatment of incentive compensation in the August 2002 *Hanko* opinion and directed staff, at that time, to explore whether a regulation addressing reporting of incentive compensation was necessary. Staff believed that the proposed regulations were appropriate because they would provide certainty regarding requirements for disqualification and reporting of incentive compensation and commission income, and would put public officials on notice as to their duties and obligations regarding incentive compensation. Additionally, it would place all of the disclosure and disqualification requirements for incentive compensation and commission income in one place.

Ms. Armstrong explained that the current regulation 18703.3 deals with both disqualification and disclosure requirements for commission income, and has the only definition of “commission income” in the regulations. Staff proposed combining a portion of the current regulation dealing with disclosure of commission income with the incentive compensation disclosure provisions to form new regulation 18728.5. Additionally, they propose that regulation 18703.3 include a definition for “incentive compensation,” and that regulation 18728.5 cross reference to the definitions in regulation 18703.3.

Ms. Armstrong stated that staff proposed changing regulation 18703.3(a), to add “commission income” and “incentive compensation” as types of income in which a public official could have an economic interest, and specifying those sections of the government code that provide that an official’s income includes promised income. She explained that staff proposed changing regulation 18703.3(c) to delete subdivision (c)(1) because it was unnecessary and detailed other clarifying changes. She noted that (c)(5) was moved to 18728.5, and that new subdivision (d) contained the definition of “incentive compensation”, tracking the *Hanko* definition. It also specified what is not included in “incentive compensation,” based on a review of the minutes of previous Commission discussions and additional staff research.

Ms. Armstrong explained that regulation 18728.5 addressed the requirements for reporting commission income and incentive compensation. She described the provisions of the new regulation, noting that the reporting requirements no longer included references to forms as they did when the requirements were in regulation 18703.3. She noted that when an official receives \$500 or more in incentive compensation the name of the purchaser must be reported separately from the employer as a source of the income (in addition to other monies received from the employer). The regulation would also require the official to determine the amount that should be attributed to the official’s customers if the employer does not provide the official with that information.

Commissioner Karlan noted that the definition of “incentive compensation” in regulation 18703.3(d) includes a predetermined formula set by the employer, and excludes from the

definition of “incentive compensation” certain bonuses. She believed those references may create an ambiguity in the regulation, because a bonus could fall both within the definition of “incentive compensation” and within the exclusion. She suggested that language be deleted from the definition of “bonus.”

Commissioner Downey observed that “bonus” was earmarked by a purely discretionary decision on the part of the employer, and “incentive compensation” would be an entitlement.

Commissioner Karlan noted her concern over the language “... bonus, the amount of which are based solely on merit, or performance measured against a preset standard or goal,” because it could lead people to believe that the bonus is not incentive compensation.

Ms. Armstrong responded that bonuses are frequently earned in a team environment, when the team meets certain performance points. This was not intended to address a sales environment.

Chairman Randolph suggested that the definition of “bonus” be clarified to make clear that it does not solely address accumulated sales.

Commissioner Karlan suggested adding the language, “A bonus which is based on the quantity of sales to particular purchasers counts as incentive compensation regardless.”

Commissioner Blair stated that an incentive usually establishes a goal for the future, where a bonus is reactive, rewarding for past accomplishments.

Chairman Randolph suggested that the language include the provision that a bonus is discretionary.

Commissioner Karlan cautioned that discretionary bonuses should also be disclosed.

Commissioner Knox observed that the incentive involved in the *Hanko* matter was discretionary, and noted that he dissented in the *Hanko* ruling because it was too great a burden to require an employee who is also a public official to make a “second tier” inquiry that would allocate incentive compensation among a variety of different customers of their employer. He believed that increasing the burdens on public officials, who are often unsalaried, would discourage people from seeking public office instead of encouraging it as the PRA intended.

Assistant General Counsel John Wallace suggested that the language be reworked by staff, noting that the focus of the language was the connection between the purchaser’s activity and the actual payment. Bonuses were intended to be separated out because they were not tied to specific purchases.

Chairman Randolph noted that the Commission must follow up the opinion previously made by the Commission with more accessible regulatory language clarifying the Commission position but making it no broader than the *Hanko* opinion and addressing direct sales and contact.

Commissioner Karlan asked whether “direct contact” 18703.3(d)(2) had to be personal direct contact or whether it included contact directed by an official to a subordinate.

Commissioner Downey discussed the *Hanko* scenario, and asked whether it would have been “direct contact” if Ms. Hanko had a subordinate handle the sales discussion with the purchaser.

General Counsel Luisa Menchaca stated that the opinion itself was limited to personal contact. She believed that “direct contact” was meant to contemplate personal contact. She did not think that supervising a subordinate would be considered direct contact with a purchaser under the regulation definition or the opinion.

Commissioner Downey questioned whether the supervisor should be treated differently if the supervisor would receive additional income as a result of the purchase.

Chairman Randolph responded that including supervisors would mean adding another level of complexity to the determination, and questioned how much farther the analysis would go in terms of the layers of supervisors. She stated that the potential for conflict of interest is in the direct relationship and not in the removed supervisory relationships. She preferred to keep the regulation narrow.

Commissioner Blair pointed out that influence can go up also, and that the chain of management could abuse the influence just as easily as the employee with the direct contact.

Commissioner Karlan stated that the line should be drawn where it is clear to the employee how much of the compensation can be attributed to the purchaser.

Commissioner Knox pointed out that it would be clear to the employee when it is a commission, and he did not disagree with the regulation’s treatment of commissions. However, Ms. Hanko earned incentive compensation based on cumulative sales from all customers in a given territory. He questioned whether proposed subdivision (d)(3) would address her situation.

Mr. Wallace responded that staff tried to stay within the parameters of *Hanko*, which did not include supervisors. He noted that Ms. Hanko told staff how much was attributable to the specific client, and staff tried to keep the regulation narrow. Additionally, Ms. Hanko had already received the money that was attributable to a specific client. He noted that if the language is broadened, it could create a bigger burden for public officials who are employees of companies.

Commissioner Knox stated that he did not feel bound to follow the *Hanko* opinion in the regulation.

Ms. Menchaca asked the Commission whether they wanted to have any kind of disclosure of these types of payments. She explained the advantage of having the definitional regulation of 18703.3 because it assures that public officials would have notice of their disqualification obligations. However, she noted that a disqualification obligation did not necessarily precipitate a reporting obligation. She asked whether the Commission wanted one or two regulations addressing the points. She believed that it was helpful to have the reporting regulation separate because it included other reporting rules in general.

Chairman Randolph stated that if the Commission decided to codify *Hanko* there should be a disclosure requirement. She noted that most officials get their information about disqualification from the Form 700 manual. She believed that it would be easier for the public to follow if it was treated the same as commission income. She suggested that the regulation be kept narrow and not cover the supervisory roles.

Commissioner Downey stated that a person with direct contact is much more likely to be able to identify a conflict than a supervisor who may have less certain knowledge about the purchasers. He agreed that the regulation not be broadened.

Commissioner Karlan stated that proposed regulation 18728.5(b)(1) and (2) were confusing. She asked how a person who received more than \$500 but less than \$10,000 of commission income would be treated under the regulation.

Ms. Menchaca responded that the regulation could be clarified, noting that (b)(2) would only apply if the income had been given to a business entity.

Technical Assistance Division Chief Carla Wardlow explained that commission income could be generated in many ways. A salesperson could get commission income from an employer and it could be less than \$10,000 from a single source. In that case, the official would report the name of their employer and that they received commission income. If an official receives commission income on a regular basis, then the official is treated as a business entity, being the source of more than \$500 but less than \$10,000 in commission income.

Commissioner Karlan suggested that the regulation be written more clearly so that public officials will know when to report and how much to report.

Ms. Wardlow noted that the Form 700 information manuals expand on how the regulation works and give examples of how to report commission income. She suggested that it may not be necessary to include those details in the regulation, since most officials look to the information manuals for guidance and not the regulations.

Commissioner Downey suggested that the language “ongoing and/or cumulative” in regulation 18703.3(d) page 4, at the end of line 13, be changed to “either ongoing or cumulative.” He further suggested that the language, “but where the formula for determining,” be changed to, “provided that the formula for determining,” on line 20.

Commissioner Karlan suggested that the first sentence of (d) be broken into two sentences to eliminate one of the two “and which” phrases.

Chairman Randolph summarized that the Commission was directing staff not to expand the scope to include supervisory employees, and to clarify the distinction between “incentive compensation” and “bonuses” in the next draft. She noted that the comment referenced the Superior Court opinion and the FPFC opinion, and requested that a copy of the Superior Court opinion be kept in the regulation file.

Ms. Menchaca noted that the notice for the regulation did not cover whether the regulation would cover employees and supervisors, and asked whether the Commission wanted to consider supervisors, which would require another notice.

Chairman Randolph responded that there was no Commission support for the consideration.

12. Adoption of Proposed Regulation 18709 (Formerly Regulation 18702.6) - Segmentation Rules.

Commission Counsel Natalie Bocanegra explained that this regulation would codify the Commission’s segmentation rules, which allow a public official with a conflict of interest in a particular decision to segment that decision from other related decisions so that the public official may participate in the other decisions. She noted that the Commission previously considered three options for subdivision (b) of the proposed regulation, and that this version of the proposed regulation included the option that the Commission chose. She reported that staff received no additional public comments on the regulation since the June 2003 Commission meeting.

Ms. Bocanegra explained that subdivision (a) of the regulation outlined the segmentation process, subdivision (b) clarified when decisions are inextricably interrelated, and subdivision (c) codified special rules relating to final decisions concerning an agency’s budget and certain general plan adoption or amendment decisions. She noted that staff recommended adoption of the proposed regulation.

Commissioner Karlan noted that the language was much easier to understand in its present proposed form.

Commissioner Downey moved adoption of the proposed regulation.

Commissioner Karlan seconded the motion.

Commissioners Blair, Downey, Karlan, Knox and Chairman Randolph voted “aye.” The motion carried by a unanimous vote.

13. Annual Technical Clean-up Packet: Adoption of Proposed Amendments to Regulations 18320, 18321, 18361, 18370, 18419, 18420, 18703.1 and 18747.

Commissioner Karlan questioned the language of regulation 18419(a)(2), noting that it made no sense because it could be read to mean that “a ‘sponsor’ of a committee could be any person to whom any of the following applies.”

Ms. Wardlow explained that a sponsor of a committee means any person to whom any of the four criteria applied, excluding candidates, proponents and other individuals. She noted that the definition of “person” in the Act includes individuals, business entities, committees, etc. Staff believed that it should be clarified that an individual (a human being) cannot sponsor a committee because it would lead to other identification requirements that should not apply. The language was trying to say that individuals do not sponsor committees.

The Commissioners discussed alternative punctuation styles to make the sentence clearer.

There was no objection to deleting the comma after the word “person,” and placing parentheses before the word “except” and after the word “individual,” and deleting the comma after the word “proponent” and the proposed comma after the word “individual.”

Commissioner Karlan moved adoption of regulations 18320, 18321, 18361, 18370, 18419, 18420, 18703.1 and 18747.

Commissioner Knox seconded the motion.

Commissioners Blair, Downey, Karlan, Knox and Chairman Randolph voted “aye.” The motion carried by a unanimous vote.

14. September 2003 Work Plan Revisions.

Mr. Wallace reported that this was the quarterly calendar for the end of 2003. The only controversial item was discussed in a staff memo attached to the calendar concerning regulation 18901. He noted that Senator Ross Johnson asked the Commission to consider amending regulation 18901 to expand the scope of the mass mailing prohibition.

Mr. Wallace stated that Proposition 73 modified the mass mailing prohibition in 1988, in an effort to limit political advantage that might be gained by using publicly funded mass mailings. He noted that the Commission recognized, at that time, that a strict reading of the language could have banned an officeholder from communicating with their constituents or with the public. The Commission adopted regulation 18901 with relatively clear definitions and created exceptions to the mass mailing prohibitions which are also clear.

Cynthia Bryant, representing Senator Ross Johnson, stated that the PRA sought to reduce the advantages of an incumbent in elections so that the election would be fairer. Senator Johnson authored Proposition 73 amending the PRA placing tighter restrictions on taxpayer-funded mass mailings to further reduce the advantages of an incumbent. She noted that the amendment was not designed to stop official's legitimate communications between the official and constituents, but was intended to stop officials from using tax dollars to pay for their campaign mailings.

Ms. Bryant stated that the regulation is ripe with loopholes, such as the exception permitting elected officeholders to send mail out up to the Election Day. She noted that the State Assembly sent over 7 million pieces of mail during the 2002 budget stalemate, costing taxpayers about \$3.5 million. She explained that Senator Johnson believed it imperative for the Commission to amend the mass mailing regulation in order to curb such blatant abuse.

Ms. Bryant observed that the Commission committed to reviewing regulation 18901 at the time it was adopted, should abuses develop. She presented a stack of newspaper articles detailing mail sent by Legislators and the Governor just before the 2002 elections, which Senator Johnson believed illustrated abuses of the regulation. She noted an April 2, 2002 Dan Walters column addressing a Department of Real Estate bulletin, which included a message from Maria Contreras-Sweet, the Secretary of Business, Transportation and Housing, touting the infrastructure accomplishments of Governor Davis. The bulletin was issued at a time when gubernatorial candidate Bill Simon was criticizing the Governor over infrastructure issues. She did not believe those issues were appropriate in the real estate bulletin.

Ms. Bryant stated urged the Commission to amend the regulation to make it better comply with the intent of Proposition 9 and Proposition 73, noting Senator Johnson's belief that it was necessary to limit the unfair election advantages of incumbents.

Chairman Randolph responded that the work plan was full for the rest of 2003, but suggested that staff to provide the Commission with information about the regulation so that they can consider whether to add it to the 2004 work plan when the calendar is considered in October 2003.

There was no objection from the Commission.

Colleen McAndrews, from Bell, McAndrews, Hiltachk and Davidian, explained that she proposed item #4 on the regulation calendar in 2001, and that the item has been deferred for 2 years. She noted that she had done quite a bit of research on the issue, and that the Commission considered it while she was on vacation and unavailable to promote her idea. The item failed to pass on a 2-2 vote, and the two Commissioners who objected to the idea were no longer on the Commission.

Ms. McAndrews observed that she could not remember another instance of a 2-year deferral for Commission consideration of an item, and suggested that the Commissioner who proposed the idea felt frustration that the issue kept coming up. She urged the Commission to consider it sooner.

In response to a question, Ms. McAndrews stated that the description in item #4 did not accurately reflect her proposal because it did not state her recommendation that the weekend extension should apply to the first two weekends in the late contribution period and not the last weekend before the election. She noted that few filing offices are open the first two weekends and no one looks at the reports until the following Monday anyway. She explained that the 24-hour reports mandated under Proposition 34 have the Monday extension.

In response to a question, Mr. Wallace stated that, when an item is dropped from the regulation calendar it may never come back. He recalled that there was some Commission support for looking at the issue which was why it was scheduled to be revisited in two years. A majority of the Commissioners were not interested in looking at the issue at the time.

Ms. Menchaca recalled that the issue may require a legislative change instead of a regulatory change.

Chairman Randolph asked staff to provide the Commission with more information in October.

Scott Hallabrin, from the Assembly Ethics Committee, advised the Commission that both Houses of the Legislature have pre-election mail bans in effect as policy. Those bans are fairly restrictive and would not allow mass mailings to be sent out at all in the Assembly and cannot be sent out by Senators whose names appear on the ballot.

3. In the Matter of Colin Flaherty, FPPC No. 99/783. (2 counts.)

Chairman Randolph asked whether there were contribution limits in the jurisdiction or whether the respondent in this case was simply trying to conceal who provided financial support.

Senior Commission Counsel Deanne Canar responded that there were no local campaign limits involved in the election and that the respondent was trying to conceal the names of contributors.

In response to a question, Ms. Canar stated that this case was the result of a proactive investigation by FPPC Supervising Investigator Dennis Pellon. She noted that Mr. Pellon expended considerable investigative effort pursuing the case.

In response to a question, Enforcement Chief Steven Russo stated that any violation of the PRA can be prosecuted as a misdemeanor by local district attorneys. He noted that, historically, jurisdictions do not often pursue these cases criminally.

Commissioner Karlan questioned why the respondent had not responded to the charges.

Ms. Canar stated that she could not explain the choices of the respondent.

In response to a question, Ms. Canar stated that cases involving campaign money laundering are among the more serious violations of the Act because they thwart the fundamental principles of the Act by hiding the names of the financial backers of a candidate from the voters. As such, she believed this type of violation always warranted the maximum penalty.

Commissioner Downey noted that default cases typically result in the maximum fine.

Ms. Canar added that there were aggravating factors to the case. She explained that the respondent did not cooperate with the investigation, nor did he admit the violations. The respondent did not help identify the violations in any way nor did he reveal the full extent of his laundering scheme.

Commissioner Blair moved that the Commission accept the staff recommendation for a \$76,000 penalty.

Commissioner Karlan seconded the motion.

Commissioners Blair, Downey, Karlan, Knox and Chairman Randolph voted “aye.” The motion carried by a unanimous vote.

15. Legislative Report.

There being no questions or comments from the Commission, the report was accepted as submitted.

16. Executive Director’s Report.

There being no questions or comments from the Commission, the report was accepted as submitted.

17. Litigation Report.

Ms. Menchaca explained that the California Appellate Court and the California Supreme Court declined to consider the *McClintock v. Shelley, FPPC* further, and the matter was concluded.

Commissioner Knox commended Ms. Menchaca and Mr. Tocher on their fine work in the litigation of this case. He noted that the Secretary of State did not take the “laboring oar” in this matter, but that Ms. Menchaca and Mr. Tocher persuaded the judge to reverse a tentative ruling and rule instead in favor of the FPPC.

Commissioner Downey observed that reversal of a tentative ruling is rare, and complimented staff for a job well done.

The meeting adjourned at 10:55 a.m.

Dated: October 2, 2003.

Respectfully submitted,

Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Randolph